

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
November 14, 2006 Session

**ROSE MARIE PURCELL FLOWERS (CLAYPOOL) v. ROBERT
THOMAS FLOWERS, SR., ET AL.**

**A Direct Appeal from the Circuit Court for Davidson County
No. 86D-1980 The Honorable Muriel Robinson, Judge**

No. M2005-01536-COA-R3-CV - Filed on February 6, 2007

This case involves a dispute between the former wife of the decedent and the widow of the decedent over the proceeds of certain retirement accounts of the decedent. The dispute arises from a property settlement agreement incorporated in the final decree of divorce between decedent and his former wife on the one hand and a antenuptial agreement and property settlement agreement between decedent and his widow on the other hand. The trial court awarded former wife a portion of the life insurance policy and two of the decedent's retirement plans and awarded the widow part of the insurance proceeds and the proceeds of a Wal-Mart profit sharing account. Former wife has appealed, and both parties present issues for review. We reverse in part, affirm in part, modify in part and remand.

**Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Circuit Court Reversed in Part,
Affirmed in Part, Modified in Part and Remanded**

W. FRANK CRAWFORD, P.J., W.S., delivered the opinion of the court, in which HOLLY M. KIRBY, J. and WILLIAM C. KOCH, JR. P.J., M.S., joined.

Alan Mark Turk of Brentwood, Tennessee For Appellant, Rose Marie Purcell Flowers (Claypool)

L. Robert Grefseng of Columbia, Tennessee For Appellee, Janice Flowers

OPINION

The instant litigation started when the appellant, Rose Marie Purcell Flowers (Claypool) (hereinafter referred to as "Appellant" or "First Wife") filed a petition for contempt against Robert Thomas Flowers, Sr., resulting from his alleged violation of a property settlement agreement incorporated in a final decree of divorce between First Wife and Mr. Flowers. As pertinent to the issues before the Court, the Agreement provides:

| | | |
|--------------------------------------------------|------------|-------------------------------------------------------------|
| 1. National Life Insurance Co. | #1398120 | \$24,500.00 (Tom) |
| | #1422361 | \$ 8,000.00 (Tom) |
| 2. MONY | #894-48-54 | \$ 5,000.00 (Tom) |
| | | \$ 1,200.00 (Rose) |
| 3. Conn. Mutual Life | #2.477.990 | \$10,000.00 (Tom) |
| 4. Wal-Mart Life Ins. And Stock Purchase Plan | | \$40,000.00 Life insurance, Purchase plan unknown) |

1. #73328826
2. #73328812 total value of \$20,000.00 for both

The parties stipulated that the insurance policies and financial accounts listed in the agreement are no longer in existence, and the actual assets in controversy, at the time of trial are the insurance proceeds¹ and Wal-Mart pension benefits as of May 9, 2004, as follows:

¹ The life insurance benefits in dispute in the trial court require different treatment than the pension benefits, but there is no appeal concerning the award of the insurance proceeds. This appeal involves only the dispute over the retirement benefits.

Associate 401-K - \$ 17,944.52

Total Pension Benefits - \$161,392.07

Wal-Mart Life Insurance (now America International
Life Assurance Company of New York)

Basic (company paid) - \$ 50,000.00

Optional \$150,000.00

Total Life Insurance \$200,000.00

Robert Thomas Flowers, Sr., died May 9, 2004, and subsequently the Estate of Robert Thomas Flowers, Sr., was substituted as party defendant. Also added as further respondents were Janice F. Flowers, Administrator, CTA, and Janice Flowers, individually, Robert Thomas Flowers, Jr., Laura Beth Taylor, and Rebecca Fossee, the Flowers' children. Wal-Mart Stores, Inc. and American International Life Assurance Company of New York, were also added for purpose of interpleading assets under their control. By amendment, the suit was characterized as a declaratory judgment suit to determine the rights of the various parties.

The parties provided by written stipulation:

9. That Robert Thomas Flowers, Sr.'s first day of employment with Wal-Mart was July 19, 1986.

10. That on May 9, 2004, Robert Thomas Flowers, Sr. died.

11. That as of May 9, 2004 Robert Thomas Flowers, Sr. had \$50,000.00 in company paid group life insurance and \$150,000.00 in optional life insurance and that such insurance was through American International Life Insurance Company of New York (AI Life). The \$50,000 policy was obtained as a benefit through his employment with Wal-Mart Stores, Inc. At the time of his death, the beneficiary designation listed his three children being Laura Beth Taylor with 33.33 percent, Rebecca Fossee with 33.33 percent and Robert Flowers, Jr. with 33.34 percent.

12. That with regard to the company paid group life insurance through Wal-Mart, as of February 5, 1997, Mr. Flowers designated Janice M. Flowers, his then wife, Robert T. Flowers, Laura Beth Taylor, and Rebecca Ann Fossee of the decedent's children as equal beneficiaries (25% each of the policy proceeds).

13. That on February 5, 1997 with regard to the optional life insurance through Wal-Mart (at that time issued by Cigna) decedent's wife, Janice M. Flowers, and three children as designated above were also designated as 25% each beneficiaries of policy proceeds.

14. That on November 18, 1998, Robert Thomas Flowers, Sr. designated both his company paid and optional life insurance plans through Wal-Mart, Inc. to Janice Flowers, decedent's wife (43.75% of life insurance benefits) with Robert Thomas Flowers, Jr., Beth Flowers Taylor, and Becky Flowers Fossee each to receive 18.75% of the life insurance benefits.

15. That on May 15, 2002, decedent designated both his company paid and optional life insurance plans plus his accident insurance and accidental death insurance to his children, Laura Beth Taylor, Rebecca Fossee, and Robert Flowers, Jr., equally, each daughter designated as a beneficiary of 33.33% death benefits and his son at 33.34% of death benefits.

16. That on November 12, 2002, Mr. Flowers designated both his company paid and optional life insurance plans to his three children, Laura Beth Taylor, Rebecca Fossee, and Robert Flowers, Jr., as beneficiaries with the daughters to each [sic] receive 33.33 percent of the death benefits and the son, Robert Flowers, Jr., to receive 33.34 percent.

17. That as of May 9, 2004, decedent had the following assets through Wal-Mart, Inc.

- | | |
|----------------------|--------------|
| 1. Profit Sharing: | \$137,013.23 |
| 2. Company 401(K): | \$ 6,434.32 |
| 3. Associates 401(K) | \$ 17,944.52 |

That on May 15, 2002 and at the date of death, Mr. Flowers designated his wife, Janice Flowers, as the sole beneficiary of the benefits in his profit-sharing account and his company and associates 401 (K) Plan.

18. The letter of November 2, 2004 from Andy Rowlett of Howell & Fisher to the best of the parties' knowledge, sets out the benefits of the decedent at the time of his death and the change of beneficiary of

his life insurance, 401 (K) and retirement which shall be submitted in evidence without further proof to the Court.

Correspondence from L. Robert Grefseng, dated January 4, 2005 and Phillip Robinson dated January 14, 2005 and the responses, including attachments to this correspondence from Any Rowlett on behalf of Wal-Mart dated January 27, 2005 which further explain the nature of Mr. Flowers' benefits shall be admitted into evidence.

19. That International Life Insurance Company of New York (AI Life) has paid into Court the sum of \$153,045.51 for policy number 10722 under claim number W01094801 and has paid \$51,015.17 through policy number 10722 under claim number W01094701.

20. That on April 26, 2002, Janice M. Flowers filed a Complaint for Divorce against Robert Thomas Flowers, Sr., in the Maury County Chancery Court. Thereafter, on April 30, 2002, Janice M. Flowers executed a Marital Dissolution Agreement which incorporated the terms of the Antenuptial Agreement entered into by and between Janice M. Flowers and Robert T. Flowers, Sr. dated December 11, 1996.

21. That on May 16, 2002, Robert T. Flowers, Sr. executed the Marital Dissolution Agreement.

22. That after Janice M. Flowers filed the Divorce Complaint with the Maury County Chancery Court and a Marital Dissolution Agreement was executed by both parties, they learned that Mr. Flowers had been diagnosed with terminal cancer and was given approximately four to six months to live.

23. That on May 29, 2002, an Order dismissing the divorce proceeding in Maury County was signed by the Court and entered on May 31, 2002.

24. That on April 15, 2004, Mr. Flowers executed a holographic will which has been duly admitted to probate in Maury County, Tennessee.

25. All parties waive the personal appearance of Serita Fields, Richard Baud and Betty Hendrix and agree that if called to testify, that their testimony would be in conformity with their discovery depositions, however, all parties reserve the right to object to portions

of the deposition testimony if such testimony fails to conform to the rules of evidence.

Appellee, Janice Flowers (hereinafter referred to as “Second Wife” or “Appellee”), and Mr. Flowers married December 24, 1996. Previously, on December 11, 1996, they entered into an antenuptial agreement, which provides, as pertinent to the issues involved herein:

14. PENSION BENEFITS: Each party waives all rights that he or she may have as surviving spouse of the other:

- (a) To any qualified joint or survivor annuity;
- (b) To any qualified pre-retirement survivor annuity;
and
- (c) To be the designated beneficiary of the other under any qualified pension or profit sharing plan.

Each party further agrees, subsequent to their marriage, to consent in writing to an election to waive all such rights in form [sic] which complies with all the applicable statements, federal laws and regulations upon the request and waives any rights into the plan of the other except as provided herein:

- (a) In the event that Ms. Fann dies while the parties are still legally married, any retirement plan which she has with the State of Tennessee will go to Mr. Flowers as beneficiary. This, of course, is conditioned upon the parties being legally married and no divorce proceedings pending at that time.
- (b) Except as voluntarily designated in any such plan by the spouse.

After an evidentiary hearing, the trial court filed a Memorandum which included findings of fact. The Memorandum provides in pertinent part as follows:

This matter came before the court on January 27, 2005, pursuant a Petition for Contempt filed by the first wife of Robert Flowers. The petition charges that Robert Flowers failed to comply with the Final Decree’s order that he maintain life insurance and certain retirement accounts for the benefit of his first wife unless she predeceases him. In the course of this prosecution, Mr. Flowers

passed away leaving over \$365,000 in assets subject to claims from one former wife, one current wife and three children from the first marriage. The issues involve whether, under the terms of the Property Settlement Agreement (MDA #1) incorporated within the Final Decree, the first wife is entitled to the proceeds of the later acquired insurance policies and retirement accounts, all of which have other beneficiaries, and to what extent she is entitled to them. The Court must then determine the disposition of the remaining assets in light of the second wife's (Janice Flowers, hereinafter Wife #2) Antenuptial Agreement, Marital Dissolution Agreement, one Holographic Will by Robert Flowers, and the designated beneficiaries of the assets in question. Wife #2 raises the additional issue of whether the action here is time barred by the six-year statute of limitations for contract enforcement. The assets in question below relate to benefits that Robert Flowers received by virtue of his employment with Wal-Mart beginning July 19, 1986 and continuing up until he passed away.

FACTS AND HISTORY

Robert Flowers married Rose Marie Purcell (hereinafter Wife #1) in Springfield, Tennessee on November 14, 1957. The parties were divorced in Nashville, Tennessee, over thirty years later, on September 19, 1986. Both Mr. Flowers and Wife #1 entered into a Property Settlement Agreement (hereinafter MDA #1) purporting to be a final settlement of all property rights and a discharge from all other claims arising out of their marital relationship. The agreement was approved and incorporated by the Court in the Final Decree of Divorce and provided for her to be listed as irrevocable beneficiary of Mr. Flowers' then existing life insurance policies and individual retirement accounts until her death.

Specifically identified in MDA #1, paragraph 5, were the following insurance policies:

- | | | |
|--------------------------------|------------|-------------|
| 1. National Life Insurance Co. | #1398120 | \$24,500.00 |
| | #1422361 | \$ 8,000.00 |
| 2. MONY | #894-48-54 | \$ 5,000.00 |
| | | \$ 1,200.00 |
| 3. Conn. Mutual Life | #2.477.990 | \$10,000.00 |

4. Wal-Mart Life Ins. and
Stock Purchase Plan

\$40,000.00
unspecified

5. Two Individual Retirement Accounts held with First Citizens National Bank Account numbers 73328826 and 73328812 represented to be worth \$20,000.00.

The provision further provides that, while Wife #1 was divested of any interest in the pension accounts, she would be the sole irrevocable beneficiary of the pension accounts until her death. Mr. Flowers was also ordered to designate Wife #1 as the “sole and irrevocable beneficiary on all life insurance policies which he currently has in force . . . until her death.” With respect to the IRAs, the husband was ordered to either keep the two accounts, or keep equivalent substitutes in full force and effect, free from encumbrances for the duration of the life of Wife #1. The above insurance and retirement accounts total \$108,700. The agreement further provided a final settlement of all property rights and a discharge of all further claims arising from the marital relationship, as well as a waiver of present and future claims.

Mr. Flowers began working for Wal-Mart in July 1986 and married Janice Fann (now Janice Flowers, Wife #2), in December 1996. Prior to the marriage, the parties entered into an Antenuptial Agreement providing for the division of their separate and jointly owned property. Paragraph 15 of the Antenuptial Agreement discusses life insurance and declares that Mr. Flowers “has in effect a policy of life insurance in the face value of \$300,000” and recites his desire to provide for his prior marital children. With these recitals, the agreement provided that Wife #2 would receive a “one-fourth beneficiary” or “in essence a beneficiary for \$75,000 of the face proceeds of the policy.” The proof shows that Mr. Flowers had only \$200,000 of life insurance coverage. Wife #2 filed for divorce from Robert Flowers on April 26, 2002 in Maury County, Tennessee executing a Marital Dissolution Agreement that incorporated by reference the earlier antenuptial agreement. Wife #2 voluntarily dismissed the divorce proceeding after she discovered that Robert Flowers had terminal cancer in May of 2002. Robert Flowers passed away on May 9, 2004.

In January 1988, Wife #1, by and through counsel, initiated correspondence with Mr. Flowers admonishing him to comply with

the provisions of the Final Decree with respect to insurance. The evidence further shows that in early 2004 Wife #1 and her attorneys began making inquiries towards First Citizens National Bank and National Life Insurance Company regarding the IRAs and insurance discussed in their Property Settlement Agreement (MDA #1). These inquiries revealed that the items promised were no longer in existence. Thereafter, she filed a Petition for Contempt on April 7, 2004 seeking permanent injunctive relief, court costs and attorneys' fees. The next day, Wife #1 moved to join Wife #2 and Wal-Mart as parties. By Agreed Order, Wife #2 joined the suit as a party. Wal-Mart is the current provider of Mr. Flowers' insurance and retirement benefits and the life insurance. Wife #2 is the sole beneficiary of the Profit Sharing and 401 (K) Plans. American International Life Insurance [sic] Company of New York issued the insurance policy on behalf of Wal-Mart and each of Mr. Flowers' three children stand as beneficiary effective November 12, 2002. American International filed a Motion to Intervene and the insurance proceeds were deposited with this court in December 2004. Additionally, on December 6th, 2004, by order of this Court, the estate of Robert Flowers was substituted for Mr. Flowers personally and his three children joined in this action to determine their rights to the insurance proceeds. Finally, Robert Flowers executed a Holographic Will dated April 15, 2004 naming Janice Flowers (Wife #2) the beneficiary of all insurance and pension proceeds provided under his Wal-Mart employment.

The trial court noted that the case "turns upon the interpretation of the Marital Dissolution Agreement of Wife #1 and the Antenuptial Agreement and Dissolution Agreement of Wife #2." Subsequently, on April 11, 2005, the court entered its order making the award, and later amended the order by a consent order entered June 2, 2005. The amended order states as follows:

It appearing to the Court as evidenced by the signatures of counsel below that all parties have agreed that amending the April 11, 2005 Order of this Court by substituting two paragraphs in it with the two paragraphs set forth below would simplify administration of this matter, it is therefore **ORDERED** that

(I) the second paragraph on page one of that Order is substituted with the following:

It is therefore **ORDERED, ADJUDGED AND DECREED** that Petitioner, Rose Marie Flowers (Claypool) is hereby awarded (1) \$88,700 from the American International Life Insurance [sic]

proceeds currently held in the Office of the Circuit Court Clerk, (2) 11.58% of the total value of the account of Robert Thomas Flowers, Sr., in the Wal-Mart Profit Sharing and 401 (k) Plan as of the date this order becomes final, and (3) all the shares in the Wal-Mart associate stock purchase plan (“ASPP”) administered by EquiServe. Rose Marie Flowers (Claypool) will become the owner of all amounts and shares described in this paragraph, including, for the ASPP, any shares accumulated from dividend reinvestment, if any. Ms. Claypool shall have the right to give instructions to Wal-Mart and EquiServe regarding what to do with the amounts and shares awarded to her after this order becomes final.

And

(II) the first paragraph on page two of that Order is substituted with the following:

It is further **ORDERED** that Respondent, Janice Flowers, is awarded one-fourth of the American International Life Insurance [sic] proceeds currently held in the Office of the Davidson County Circuit Court Clerk in the amount of approximately \$51,015.17 and, further, is awarded the number of shares equal to 88.42% of the total value of the account of Robert Thomas Flowers, Sr. under the Wal-Mart Profit Sharing and 401 (k) Plan as of the date this order becomes final. Janice Flowers will become the owner of all amounts and shares described in this paragraph. Ms. Flowers shall have the right to give instructions to Wal-Mart and EquiServe regarding what to do with the amounts and shares awarded to her after this order becomes final.

Appellant, First Wife, has appealed and presents the following issues for review as stated in her brief:

1. The trial court erred when it awarded appellee 88.42% of the total value of Mr. Flowers’ Wal-Mart Profit Sharing Plan and Mr. Flowers’ Associate 401 (K) Plan. The property settlement agreement between Mr. Flowers and the appellant precluded the award of any portion of Mr. Flowers’ pension benefits to appellee.
2. The execution of the December 11, 1996 Antenuptial Agreement by Mr. Flowers and appellee and its incorporation in their marital dissolution agreement in May 2002 precluded the award of any portion of Mr. Flowers’ pension benefits to appellee.

Appellee has presented the additional issue:

The trial court erred in awarding any relief to the appellant as her claims are barred by the statute of limitations or alternatively by the doctrine of laches.

ANALYSIS

The material facts are not in dispute, and we agree with the trial court that the case at bar turns upon the interpretation of the Marital Dissolution Agreement of First Wife, and the Antenuptial Agreement and Marital Dissolution Agreement of Second Wife.

The issues set out by Appellant in the brief are rephrased and consolidated into the single issue of whether the trial court erred in awarding Appellee a part of the decedent's retirement benefits and not awarding the entire retirement benefits to Appellant.

The interpretation of a written agreement is a matter of law and not of fact; therefore, our review is *de novo* on the record with no presumption of correctness of the trial court's conclusions of law. *NSA DBA Benefit Plan v. Connecticut Gen. Life Ins. Co.*, 968 S.W.2d 791, 795 (Tenn. Ct. App. 1997).

A Marital Dissolution Agreement is essentially a contract between a husband and wife in contemplation of divorce proceedings and is to be construed as other contracts as to its meaning and effect. *Bruce v. Bruce*, 801 S.W.2d 102, 105 (Tenn. Ct. App. 1990)(quoting *Matthews v. Matthews*, 104 Tenn. App. 580, 593, 148 S.W.2d 3, 7-12 (1940). Upon incorporation of the property settlement agreement into a divorce decree, it becomes the judgment of the court. *See Hays v. Hays*, 709 S.W.2d 625 (Tenn. Ct. App. 1986). Court judgments are to be construed like any other written instruments. *Livingston v. Livingston*, 58 Tenn. App. 271, 429 S.W.2d 452 (1967).

In *Gray v. Estate of Charles Henry Gray*, 993 S.W.2d 59 (Tenn. Ct. App. 1998), this Court said:

The cardinal rule for interpretation of contracts is to ascertain the intention of the parties from the contract as a whole and to give effect to that intention consistent with legal principles. *Winfree v. Educators Credit Union*, 900 S.W.2d 285, 289 (Tenn.App.1995); *Rainey v. Stansell*, 836 S.W.2d 117, 118 (Tenn.App.1992). In construing contracts, the words expressing the parties' intentions should be given their usual, natural, and ordinary meaning. *Taylor v. White Stores, Inc.*, 707 S.W.2d 514, 516 (Tenn.App.1985). In the absence of fraud or mistake, a contract must be interpreted and enforced as written, even though it contains terms which may seem harsh or unjust. *Heyer-Jordan & Assocs. v. Jordan*, 801 S.W.2d 814, 821 (Tenn.App.1990).

Id. at 64.

With the foregoing principles in mind, we will examine the documents in question. Paragraph Five of the Property Settlement Agreement between First Wife and decedent specifically awards husband “all right title and interest in and to his IRA account and other pension benefits,” and thereupon divested the wife of any interest therein except, “husband shall designate wife as the sole and irrevocable beneficiary thereon until wife’s death.” The agreement listed life insurance in force at the time and also two IRA accounts totaling \$20,000. The agreement specifically provides that husband will keep the policies and IRAs listed “or equivalent substitutes” in full force and effect as long as wife lives. It is apparent from these provisions that wife was not awarded specific property; however, wife was awarded specifically a contractual requirement that husband name her as a beneficiary of his IRA account and other pension benefits. We construe the obligation of husband, as set out in the agreement, to be an integral part of the agreement for a division of marital property, which is not subject to modification by the court. *See Towner v. Towner*, 858 S.W.2d 888, 892 (Tenn. 1993).

By virtue of the Property Settlement Agreement, the Appellant’s interest in the retirement benefits and IRAs were vested as of that date and could not be unilaterally altered. *See Johnson v. Johnson*, 37 S.W.3d 892, 897 (Tenn. 2001). The question to be answered is what is that vested interest. The agreement set out IRAs valued at \$20,000 and insurance benefits. The stock purchase plan was listed without any value. The agreement provided that husband’s obligation was to keep the policies and IRAs listed in full force and effect or to keep equivalent substitutes in full force and effect. The agreement vested authority in the husband over all of his retirement benefits, and the ongoing investment and re-investment thereof, and also provided that he was obligated to keep in full force and effect the equivalent substitutes of items set out in the Property Settlement Agreement. This provision does not change the specific obligation on the part of the decedent to name the Appellant “as the sole and irrevocable beneficiary thereon.”

The Property Settlement Agreement is not a model of clarity; however, it does not appear to be ambiguous. The provision concerning property acquired by the decedent in the future is in keeping with the understanding of the parties and their limited circumstances at the time of the divorce that wife would receive some benefit from property accumulated after the divorce. The agreement specifically provides that while husband receives all right, title and interest to his “IRA account and other pension benefits,” wife should be divested of any interest except “that husband shall designate wife as the sole and irrevocable beneficiary thereon until wife’s death.” “[T]hereon” obviously refers to the “IRA account and other pension benefits.” The Wal-Mart profit sharing account is a pension benefit and, under the terms of the Property Settlement Agreement, decedent was obligated to name Appellant as the sole and irrevocable beneficiary of this account. No one questions the trial court’s award of two of the retirement accounts to Appellant and, as noted, the Property Settlement Agreement required the decedent to make the Appellant the sole beneficiary of his retirement benefits. The trial court erred in awarding the Appellee a part of the retirement benefits.

Appellant also asserts that the 1996 Antenuptial Agreement between decedent and Janice Flowers precluded the award of any portion of the pension benefits to the Appellee. We do not agree. The Antenuptial Agreement provided as to the pension benefits that the parties waived their rights to be designated as beneficiary, except for the husband as beneficiary of wife's retirement benefits. The provision goes on to state that after the marriage, they agreed to waive certain rights except as provided in the agreement. The agreement then provides for the exception regarding the Appellee's State of Tennessee Retirement Plan. More notably, however, is the next exception: "except as voluntarily designated in any such plan by the spouse." It is uncontroverted that the papers executed by the decedent for the pension plans designated awards to Janice Flowers and, thus, constituted an exception to the waiver of benefits. Moreover, the provision is further tempered with Paragraph Nine of the agreement which allows a voluntary transfer between the spouses. There is no other provision in the agreement that we are aware of that prohibits the decedent from designating Janice Flowers as a beneficiary of any of his benefits. While the agreement between the decedent and Janice Flowers would allow the decedent to designate Janice Flowers as a beneficiary of his pension benefits, the decedent was previously contractually bound to make Appellant the sole and irrevocable beneficiary of this account, and she had a vested interest by virtue of this contractual right that the decedent could not change. Accordingly, the trial court erred by awarding Janice Flowers a percentage of the Wal-Mart profit sharing account and should have awarded one hundred percent of this account to Appellant.

Appellee has presented the issue of whether Appellant's claim was barred by virtue of the statute of limitations or alternatively by the doctrine of *laches*. The trial court found that there was no evidence to sustain the proposition that the statute of limitations or the doctrine of *laches* barred the action. The Appellee has failed to cite to the record any evidence to support these defenses. An award based on the equitable defense of *laches* must be predicated on the trial court's finding of inexcusable, negligent, or unreasonable delay on the party asserting the claim with resulting prejudice to the defendant. ***Finova Capital Corp. v. Regal***, 195 S.W.3d 656, 660 (Tenn. Ct. App. 2006). *Laches* is an equitable defense and requires the finder of fact to determine whether it would be inequitable or unjust to enforce a claimant's rights. ***Id.***

In the case at bar, the Appellant's interest established by the Property Settlement Agreement was the right to be designated as a beneficiary of the account in question and necessarily this designation could be made at any time up to the decedent's death. The evidence does not preponderate against the trial court's findings that neither the statute of limitations nor the doctrine of *laches* is proven to be a bar to the Appellant's claim.

The decree awarding part of Mr. Flowers' pension benefits to Appellee is reversed. The decree is modified to award one hundred percent of all of the decedent's pension benefits to the Appellant. The decree is in all other respects affirmed. Costs of the appeal are assessed against the Appellee, Janice Flowers.

W. FRANK CRAWFORD, PRESIDING JUDGE, W.S.